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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,546	01/07/2002	Kamran Loghman-Adham	07308.120	4853

7590 11/04/2005

Liniak Berenato Longacre & White
Suite 240
6550 Rock Spring Drive
Bethesda, MD 20817

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 11/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/036,546

Applicant(s)

LOGHMAN-ADHAM, KAMRAN

Examiner

Alton N. Pryor

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 21 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-7,9-20 and 34-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 34-47 and 52 is/are allowed.
- 6) ☒ Claim(s) 2-7,9-20 and 48-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's arguments, see paper, filed 7/21/05, with respect to the rejection(s) of claim(s) 5-11,48,49 under 35 USC 103(a) as being obvious over Ohara and Buseman have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of rejection below. Applicant has successfully antedated Buseman by the filing of a Rule 131 declaration showing that Applicant had possession of the invention prior to Buseman. Applicant has also provided a letter from ZARC showing a claim to the invention prior to Buseman.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-7,9-20,48-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lentini et al (US 5942212; 8/24/99) and Chatterjee et al (US 4869897; 9/26/89), and Nakajima et al (US 6348200; 2/19/02). Lentini teaches a skin tanning (skin cosmetic) preparation comprising dihydroxacetone and alpha hydroxyl acid. See abstract, column 1 line 56 – column 2 line 10. Lentini teaches that the composition can comprise additional components such as propylene glycol dicaprylate dicaprate and propellants. See column 3 lines 4 – 21. Lentini teaches that the composition can be applied as a spray (aerosol). See column 2 lines 52-64. Lentini

Art Unit: 1616

does not teach the skin cosmetic composition comprising glycerol tris(2-ethylhexanoate) as part of the solvent system, carbon dioxide as the propellant, and capsanthin as the inflammatory or incapacitating agent. However, Chatterjee teaches a photoprotection skin care composition comprising sorbohydroxamic acid and a sunscreen. See abstract. Chatterjee teaches that the composition employs carbon dioxide as the propellant and that the composition can exist in the form of an aerosol. See column 7 lines 22-43. It would have been obvious to one having ordering skill in the art to modify the invention of Lentini to include the sorbohydroxamic acid, sunscreen, and carbon dioxide taught by Chatterjee. One would have been motivated to do that in order to protect the skin from sunburn or other damage caused by the UV light. In addition, Nakajima teaches a skin care cosmetic preparation comprising an amide derivative, polyhydric alcohol, vegetable extract, and organic acid. See abstract. Nakajima teaches that the preparation can comprise additional components such as 0.001 to 5% capsanthin as an oxidant and 0.001 to 50% glycerol tris-2-ethylhexanoate as an oil substance. See column 16 lines 19-39, column 23 lines 3-37. Nakajima also teaches that the preparation can exist in spray form. See column 25 line 59 – column 26 line 2. It would have been obvious to further modify the invention derived from the combination of Lentini and Chatterjee to include capsanthin and glycerol tris-2-ethylhexanoate taught by Nakajima. One would have been motivated to do this since capsanthin is an antioxidant, which would retard skin oxidation, and glycerol tris-2-ethylhexanoate which is hydrophilic would enhance skin permeation. With respect to the instant amounts of propylene glycol dicaprylate / caprate, glycerol tris-2-ethylhexanoate, and incapacitating agent, one having ordinary

Art Unit: 1616

skill in the art would have been expected to determine the optimum amount of ingredients. One would have been motivated to do this in order to develop a composition that would have been most effective in protecting the skin from damage and aging. It is also possible that the optimum amount of capsanthin and glycerol tris-2-ethylhexanoate determined at the time of the prior art invention may have fallen within the range specified by the claims since the amounts disclosed by the prior art and instant invention overlap. In addition, the amount of capsanthin (incapacitating agent) taught in the reference is enough to cause sufficient inflammatory to disable the recipient since the amount of capsanthin disclosed in the prior art and instant claims overlap.

Allowable Subject Matter

Claims 34-47,52 are allowable. The prior art does not teach or disclose a method of incapacitating a subject comprising applying to the facial area of the subject a composition comprising glycerol tris-2-ethylhexanoate plus poly glycol fatty acid esters.

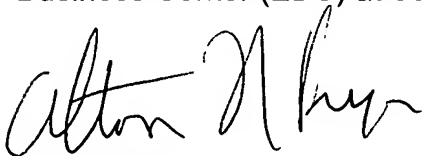
Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1616

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Alton Pryor', is written over the printed name.

Alton Pryor
Primary Examiner
AU 1616